

Disadvantaged Business Enterprise Program Frequently Asked Questions

DISCLAIMER: These questions and answers provide guidance and information in conjunction with the provisions under 49 CFR part 26, pertaining to the implementation of the Arizona Department of Transportation (ADOT) Disadvantaged Business Enterprise (DBE) program. These questions and answers are not, in themselves, legally binding or mandatory, and do not constitute regulations. While these questions and answers are not mandatory, they are derived from extensive Department of Transportation (DOT), recipient, and contractor experience and input concerning the determination of compliance with 49 CFR Part 26.

1. What is a Disadvantaged Business Enterprise (DBE)?

A disadvantaged business enterprise or DBE is a for-profit small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged. In the case of a corporation, 51 percent of the stock must be owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. What is the Arizona Unified Certification Program?

The Arizona Unified Certification Program (AZUCP) was developed under a mutual agreement between certifying agencies, creating “one-stop shopping” for Disadvantaged Business Enterprise (DBE) certification in Arizona. The Arizona Department of Transportation Business Engagement and Compliance Office, City of Phoenix Equal Opportunity Department and City of Tucson Department of Procurement certify eligible firms throughout the state the state of Arizona.

3. What are the DBE program objectives?

- To ensure non-discrimination in the award and administration of USDOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
- To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in USDOT-assisted contracts;

- To assist the development of firms that can compete successfully in the marketplace outside the DBE program;
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

4. What are the criteria for DBE certification?

The following eligibility requirements must be proven by all applicants and the comprehensive list of eligibility requirements can be found in 49 CFR Part 26.

Social and Economic Disadvantage: A disadvantaged owner must be a U.S. Citizen (or lawfully admitted permanent residents) and meet the definition of socially and economically disadvantaged as defined in 49 CFR Part 26.67. Groups that are rebuttably presumed to be disadvantaged include Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian-Americans, or other minorities found to be disadvantaged by the SBA. Determinations of social disadvantage for a person/persons that are not rebuttably presumed to be disadvantaged can be made on a case-by case basis.

Personal Net Worth: Only disadvantaged persons having a personal net worth (PNW) of less than \$1.32 million can be considered as a potential qualified DBE. Items excluded from a person's net worth calculation include an individual's ownership interest in the applicant firm and his or her primary residence.

Business Size Standard: A firm (including affiliates) must be a small business as defined by the Small Business Administration (SBA). It must not have annual gross receipts over \$23.98(current), as of 01/13/2021 it will be \$26.29 million in the previous three fiscal years (\$56.42 million for airport concessions in general, with some exceptions). Depending on the type of work the business performs, other size standards may apply.

Ownership: Must be a for-profit small business concern where socially and economically disadvantaged individuals own at least 51% interest. Those socially and economically disadvantaged individuals must control the day to day management AND daily business operations of the firm.

Independence: Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. Determinations of independence is scrutinized by evaluating relationships with non-DBE firms as it relates to personnel, facilities, equipment, financial and/or bonding support and other resources.

Management and Control: The socially and economically DBE owner(s) must possess the power to direct or cause the direction of the firm's operations, management, policies, etc. If that power is delegated to staff, it must be revocable at any time by the DBE owner(s).

5. How can I prove my group membership?

Any member of a group that is rebuttably presumed to be disadvantaged (49 CFR 26.67(2)) must submit a signed and notarized affidavit attesting to your membership in those groups.

Any individual that is not a member of a rebuttably presumed group or if a member of a rebuttably presumed group is being rebutted has the burden of proving, by a preponderance of evidence, that they are socially and economically disadvantaged according to Appendix E of 49 CFR part 26.

6. If I do not fall within the groups that are rebuttably presumed to be disadvantaged, can I still apply for DBE Certification?

Yes. If you are not a member of a group that is presumed to be disadvantaged you may apply for DBE certification but your burden to prove your disadvantage through the guidance provided in Appendix E of 49 CFR part 26.

7. What is the threshold for Personal Net Worth (PNW)?

The PNW threshold for each owner(s) shall be no greater than \$1.32 million. Only disadvantaged persons having a personal net worth (PNW) of less than \$1.32 million can be considered as a potential qualified DBE. If the PNW of the owner(s) exceeds \$1.32 million, those persons are not eligible for certification as a DBE.

8. Which business owner should fill out the Personal Net Worth (PNW) statement?

The disadvantaged owner(s) whose ownership and control is being relied upon for DBE certification should complete a PNW statement. Usually this is the person who owns 51% or more of the firm. If two disadvantaged owners make up a majority of 51% ownership, both will be required to complete the PNW statement.

For example: Owner A owns 33%, Owner B owns 33% and Owner C owns 34%. No one owner owns 51% so at least two disadvantaged owners, whose ownership and control is being relied upon to meet the 51% ownership by a disadvantaged individual, must complete the PNW statement.

9. When filling out the PNW statement, should I include my primary residence even though it is excluded from the PNW calculations?

Yes, you must indicate the current market value of your primary residence on the PNW form together with any debt you owe against it. The equity in your primary residence does not count toward the \$1.32 million PNW threshold but including this information is required. If a disadvantaged individual owns additional properties or homes, those will factor in to that calculation.

10. Why is it required to have an on-site evaluation of my business?

According to 49 CFR 26.83 (c)(1) and (c)(1)(i) states: “You must take all the following step in determining whether a DBE firm meets the standards of subpart D of this part: (i) Perform an on-site visit to the firm’s principal place of business. You must interview the principal officers and review their resumes and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of eligibility investigation in your jurisdiction or local are. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification.”

11. If my business is DBE certified, how long is the certification good for?

Once you become DBE certified, your certification does not expire, however you are required to submit a DBE annual update application every year. The date in which you must submit your DBE annual update application varies by the agency in which you are certified but the application must affirm that there have been no changes if the firm’s circumstances to meet the size, disadvantaged status, ownership or control requirements. The application also requires you to submit your firm’s most recent taxes and any other relevant information as required in your application.

If a firm does not submit the DBE annual update application, it may be deemed as failing to cooperate according to 49 CFR 26.83(j) and may affect their eligibility as a DBE.

12. What is the determination on the eligibility of firms owned by an Indian tribe?

According to 49 CFR part 26.73(h) states: “A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR part 26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in 49 CFR part 26.71.”

13. I'm an out-of-state business and currently seeking work in Arizona, can I be certified as a DBE?

Yes, but you must be certified in your home state first. If your principal/primary business location is outside of Arizona you must be DBE certified in that state first before you apply for DBE certification in Arizona.

14. Is there a fee to the applicant associated with the DBE certification process?

No. There are no fees associated with submitting a DBE application in Arizona.

15. I have questions regarding the DBE application; who can I contact for assistance?

You may contact ADOT Business Engagement and Compliance for assistance or questions regarding the DBE application at 602-712-7761, Monday thru Friday 8:00am – 5:00pm.

You may also contact DBE Certification staff:

DBECertification@azdot.gov

16. What are my appeal rights if I am denied DBE certification?

If you are denied DBE certification, you may submit a letter to the U.S. Department of Transportation within 90 days of the date in which you were denied certification.

Your appeal letter must contain information and arguments concerning why ADOT's decision should be reversed and you must send your letter via email to: DBEAppeals@dot.gov or via a thumb drive to the following address:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Policy and Programs
Room: W78-338

1200 New Jersey Avenue, S.E.

Washington, D.C. 20590

17. How long is the certification process from start to finish?

The certification process has many variables and factors that dictate how much time it takes to go through the DBE certification process. In general, all Unified Certification Programs (UCP) in each state must make a determination on whether or not the submitted application is complete within 30 days of when it was submitted. If the application is incomplete, it will be returned and depending on the number of times an incomplete application is submitted/returned it could delay the certification process.

Once an application has been determined to be complete, the application will be received by the UCP and a decision to certify or deny should be made within 90 days. If more information is needed, if more documentation is requested, or further clarification is needed after reviewing the application the amount of time to review your application could be extended an additional 60 days. An extension of the review time must be communicated to the applicant in writing detailing the reasons for the needed extension.

18. Does DBE certification have reciprocity with other agencies such as the Small Business Administration (SBA)?

No. The Arizona UCP does not have any reciprocity with the SBA, other federal program or any other state UCP. The SBA 8(a) Program and the USDOT DBE Program are separate federal certifications and must be applied for separately.

19. I'm a prime contractor, how can I find DBE firms?

All certified firms are listed in the Arizona DBE Directory located at:
<https://utracs.azdot.gov>

You can access this database to find a list of all firms that are DBE certified in the state of Arizona. This database does not exist anywhere else except for the web address listed above.

20. My business is certified as a DBE, where do I go from here?

For jobs currently out for bid through ADOT, please visit:
<https://azdot.gov/business/ContractsandSpecifications>

For FREE business assistance and access to FREE services available to certified DBE's, please visit our DBE Supportive Services program at:
<https://azdot.gov/business/business-engagement-and-compliance/supportive-services-program>